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October 21, 2004

DOCKET FILE COPY ORIGINAL

Via Hand DeliveryMs. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554**RECEIVED**

OCT 21 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYRe: WIRELESS TELECOMMUNICATIONS BUREAU,
BROADBAND DIVISIONPetition for Reconsideration of Dismissal of
Application for Modification of ITFS Station
KT85 (BMPLIF-19950915HW); WT Dkt. 03-66

Dear Ms. Dortch:

Transmitted herewith, on behalf of The School Board of Miami-Dade, Florida, is an original and eleven copies of its reply to the oppositions to its petition for reconsideration of the dismissal of its above-referenced application. This application was dismissed pursuant to paragraph 263 of the *Report and Order and Further Notice of Proposed Rulemaking*, released on July 29, 2004, *In the Matter of Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, WT Docket No. 03-66. As this involves a decision in that rule making proceeding, we are also filing this reply electronically.

Please contact the undersigned if you having any questions concerning this petition.

Respectfully submitted,


Thomas J. Dougherty, Jr.No. of Copies rec'd
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

OCT 21 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of Application of)
)
THE SCHOOL BOARD OF MIAMI-)
DADE COUNTY, FLORIDA)
)
For Authorization to Modify Facilities)
of ITFS Station KTB-85, Miami, Florida)

File No. BMPLIF-19950915HW

Directed To: The Commission

**REPLY TO OPPOSITIONS TO
PETITION FOR RECONSIDERATION**

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA ("Dade"), pursuant to Rules 1.106 and 1.429, hereby submits this reply to the two oppositions (the "Oppositions"), one filed jointly by Palm Beach County School Board and WBSWP Licensing Corporation ("PBCSB/WBS") and the other filed by Broward County School Board ("Broward"), to Dade's August 30, 2004 Petition for Reconsideration of the *Rebanding Report and Order*.¹ In support of this request, the following is respectfully submitted:

I. DISCUSSION

This reply addresses matters in the Oppositions that have not been previously addressed. The Oppositions also dredge up arguments made in pleading cycles long since completed. Dade's responses to those arguments are contained in its pending pleadings, as identified in the footnote at the end of this paragraph.²

¹ Dade filed a consent motion for extension of the due date of this reply to October 21, 2004. As recited in that motion, all opposing parties consented to that request.

² PBCSB/WBS' claim that the Palm Beach application had obtained cut-off status before the Dade application was filed is refuted on pages 3-6 of Dade's Consolidated Opposition to Petitions to Dismiss or Deny filed in the above-captioned matter on February 21, 1997 ("Dade's Consolidated Opposition"). PBCSB/WBS' claim that the above-captioned application sought to

A. Dade's Application Is Not Mutually-Exclusive with PBCSB's Application.

The Broward Opposition does not address Dade's explanation for why Dade's application should not have been dismissed. The Broward Opposition simply states that the Dade and PBCSB applications *were* mutually exclusive so that requires the dismissal of the Dade under the *Rebanding Report and Order*. Whether they *were* mutually-exclusive or not is not relevant. Application mutual-exclusivity only exists when the grant of one application is the de facto denial of another. *Aeronautical Radio, Inc. v. FCC*, 68 R.R.2d 1387, 1395 (D.C. Cir. 1991). Whether that is the result in any particular case requires a comparison of the authorizations each applicant would obtain. With the change in the rules, pending applications will be granted GSAs, not the PSAs they requested. If the GSAs that would be granted to each applicant would overlap, then the applications would be mutually-exclusive because the grant of one application would be the de facto denial of the other. If the GSAs would not overlap, the applications would not be mutually-exclusive. The Miami and Palm Beach applications cannot be mutually-exclusive because Broward's existing G-Group station takes for its GSA that portion of each applicant's GSA that would overlap if Broward's G-Group station did not exist.

Moreover, if the PBCSB application were dismissed as ineligible, then it and the Dade application could not be considered mutually-exclusive.³

PBCSB/WBS argue that the relevant date for determining mutual-exclusivity is the release date of the *Rebanding Report and Order* and, because the dismissal of the PBCSB application had not occurred on that date, the Dade and PBCSB applications remain mutually-

modify an expired authorization is refuted on pages 9 and 10 of Dade's Consolidated Opposition. A copy of Dade's Consolidated Opposition is attached as **Exhibit D** for the Commission's convenience of reference.

³ *Aeronautical Radio, supra*, at 1395 (an application subject to dismissal is not mutually-exclusive with other applications).

exclusive.⁴ Of course, the premise of this argument is that they are in fact mutually-exclusive which, as explained above, they are not. But even if they were, the date a defective application is dismissed is a technicality having no bearing on whether it is eligible for comparative consideration with another application.

In either case, the Commission cannot reconcile its decision to grant other non-mutually-exclusive applications with a decision to dismiss Dade's application. What both Broward and PBCSB/WBS do not say is that the issue of application mutual-exclusivity is relevant only insofar as it separates those applications that must be decided through a comparative proceeding from those that can be processed outside of a comparative proceeding. "*Were*" mutually exclusive and "*were mutually exclusive as of the date*" of the *Rebanding Report and Order* are not concepts of any significance in this analysis.

B. The Broward Interference Consent Was Valid and Cannot Be Withdrawn

Broward asserts that the interference consent letter it provided Dade before Dade filed its application is not valid. Although Dade amended its application in 2001 to avoid the need to rely upon this consent, Dade believes that the Commission should be fully aware of the circumstances surrounding the consent letter and the difficulty that has been created for Dade.

Dade relied upon that consent letter in designing the transmission and reception system and filed it with the Commission on the same day Dade filed its application. That letter is fully enforceable, as Dade relied upon it. That Broward might develop second thoughts well after it delivered the consent is a risk that Broward took of its own volition. To allow it to withdraw a consent after an application based upon the consent is filed is to add uncertainty and unnecessary

⁴ PBCSB/WBS Opposition, at 4.

disruption to the licensing process and to give short shrift to the duty all ITFS applicants have under Rule 74.903(c) to cooperate with one another in resolving interference matters.

Broward offers two unconvincing reasons for disavowing the consent letter and petitioning to deny Dade's application over a year after it was filed. First, Broward claims that the consent letter is not Broward's consent because it was issued by the persons within the Broward School Board who run the ITFS system and not the School Board itself.⁵ Thus Broward argues that the Director of the Broward ITV Center, Mr. Livingston, had no authority to sign and provide Dade with the consent letter. This is a ridiculous argument. The Broward ITV Center is a part of the Broward School Board tasked with running the ITFS system. It is not separate from the Broward School Board.

Broward's argument as to Mr. Livingston's authority simply cannot be squared with Broward's past conduct. In fact, the employees within the Broward ITV unit have licensing responsibility for the Broward School Board. Mr. Livingston's subordinate, Mr. Dale Carls, frequently and routinely made representations for the Broward School Board to the Commission and filed authorization applications with the Commission on Broward's behalf. One example is a 1994 letter making representations to the FCC and signed by Mr. Carls on behalf of the Broward School Board.⁶ Another example is a May 22, 1995 letter from Mr. Carls to the Commission.⁷ If, as Broward argues, Mr. Livingston cannot bind the Broward School Board, then how is it that *his subordinate and direct report*, Mr. Carls, was able to make representations

⁵ Petition to Deny (File No. BMPLIF-950915HW), at 2, filed Nov. 1, 1996.

⁶ Letter from Dale F. Carls, Operations Manager, to Secretary, Federal Communications Commission referring to ITFS Stations KTZZ22 and KLC80, and File Nos. BMLIF-920410DA & BRIF-860327DA, dated August 15, 1994. A copy of this letter is attached as **Exhibit A**. The Broward School Board relied upon this letter to obtain the grant of that application.

⁷ Letter from Dale F. Carls, Operations Manager, to Secretary, Federal Communications Commission referring to ITFS Stations KTZZ22, and File No. BMLIF-920410DA, dated May 22, 1995. A copy of this letter is attached as **Exhibit B**.

for the Broward School Board to the Commission? If, Mr. Livingston was not able to commit the Broward School Board on ITFS matters, we are also puzzled by the fact that it was this same Dr. Livingston who requested Dade's consent to a 1995 application for authority to modify the Broward B-Group station to use the facilities it now uses in a letter in which he committed the Broward School Board to correct any interference to Dade's B-Group station.⁸

Mr. Carls' 1994 letter not only shows the absurdity of Broward's authority argument, its substance shows that the consent Broward issued to Dade was issued as part of an agreement among Broward, Dade and Palm Beach Counties to coordinate their ITFS systems. Thus, Mr. Carls' 1994 letter represented to the FCC that the Broward School Board has:

"coordinated our applications with the current and future plans of our neighboring school districts in Dade County to the south, and Palm Beach County to our north. All three counties utilize the services of Kessler & Gehman, Telecommunications Consulting Engineers, in Gainesville, Florida. In order to provide for the coordinated utilization of all ITFS channel groups in all three counties with minimal or no interference, we have agreed to use vertical polarization of our ITFS channels in Broward County, while horizontal polarization will be used in Dade and Palm Beach counties."

Broward's only other argument offered to support its claim that the consent letter could be properly withdrawn is its statement that it issued the letter in reliance upon the undertaking of Dade's wireless cable operator to cure interference, but that operator was no longer "in the picture."⁹ That litigation-driven statement is just plain false. First, that wireless cable operator, South Florida Television Inc., was the wireless cable operator for Dade when the consent letter was delivered and when Broward withdrew its consent over a year latter. It remains the operator,

⁸ A copy of that letter is attached in **Exhibit C**. It also appears in Exhibit D to the February 21, 1997 "Opposition to Petition to Dismiss or Deny" filed by Barry University against Broward's Petition against Barry's application for G-Group authorization in Miami, FL (File No. BPLIF-951020PU).

⁹ Petition to Deny (File No. BMPLIF-950915HW), at 2, filed Nov. 1, 1996.

having been acquired by BellSouth Corporation in 1997. Moreover, there is nothing in Broward's consent letter that conditions it upon any assistance from any wireless cable operator.

Broward's interference consent letter (1) was properly issued before Dade filed its application, (2) was relied upon by Dade, (3) furthered a well-conceived plan for the coordination of ITFS in south Florida and (4) cannot be withdrawn by Broward over a year after it was delivered.

C. Dade's Proposal Does Not Cause Interference to Broward's Station.

The Broward Opposition summarily alleges that the Dade application proposes facilities that are predicted to cause interference to Broward's existing G-Group ITFS station, directing the Commission to unspecified previous filings in this proceeding. These interference claims are false. Even if the consent letter were to be ignored, Dade's application does not propose facilities predicted to cause harmful interference.

After Broward petitioned to deny Dade's application, Dade commenced efforts to resolve the matter with the help of South Florida Television Inc. Those efforts continued over a period of years, but ultimately proved fruitless. Dade considered its options, which were two: (1) either rely on the Broward consent letter in the hope that the Commission finds that reliance proper, or (2) amend the application to eliminate interference. Dade ultimately decided that it could not allow the future of such an important project to depend upon the outcome of litigation over a consent letter. Dade, accordingly, reviewed the engineering plan for the frequencies with SFTV and, based upon that review, developed an alternative technical plan for the frequencies that would not create new or increased interference to Broward's G-Group facility. Dade amended its application by minor amendment filed on January 31, 2001 to implement this revised plan

(“Dade’s Minor Amendment”), and also opposed Broward’s petition to deny on that day (“Dade’s Opposition”).

Nine months later, and well after the due date, Broward filed its reply (the “Broward Reply”) to Dade’s Opposition. The Broward Reply contains a declaration of a Mr. Scott Ritchie alleging that the amended facilities still would cause interference to Broward’s protected reception. It is this declaration that Broward relies upon to assail Dade’s amended application. But, that declaration shows nothing. It is no more than an unhelpful, non-analytical and generally bombastic prediction of incompatibility between the Broward and Dade G-Group facilities. It falls far short of the Rule 74.903 interference studies required to show that Dade’s Minor Amendment would cause harmful interference to Broward’s protected reception.

Mr. Ritchie apparently could find no fault with Dade’s Minor Amendment because he manufactured and then studied a hypothetical facility that is materially different from Dade’s proposed facility. For example, he assumes that the beam tilt proposed by Dade does not exist,¹⁰ he assumes that Broward uses receive antennas it does not use, and he assumes that Dade must protect receiver designs that Dade as of right has pledged to upgrade.¹¹ He even falsely labels Dade’s amendment as “major” in an effort to argue that Dade must protect a Broward PSA as

¹⁰ Broward’s engineer ignores the mechanical and electrical beam tilt because “the antenna is not an off the shelf model...” Declaration of Mr. Scott D. Ritchie, at 2. By ignoring those beam tilts, the engineering statement is able to conclude that interference could result at 27 school sites. But, the fact that the antenna is not an off-the-shelf model is no excuse to ignore the beam tilts. Custom antenna design is a standard practice, and the Commission routinely licenses stations with custom antennas. In fact, all of the Atlanta ITFS and MDS licensees are authorized to use custom antennas.

¹¹ Rule 74.903(a)(3) allows a showing of non-interference based upon existing antennas at a receive site and Rule 74.903(a)(4) requires this interference analysis to consider proposed antenna upgrades, rendering Broward’s analysis baseless.

well as registered receive sites.¹² Quite simply, there is nothing in the record to refute Dade's showing that its application, as amended, meets the interference requirements of the rules.

The only other affidavit or Rule 1.16 declaration attached to Broward's Reply is one by Mr. Furlong, which is a narrative, without supporting technical analysis, of his experience with the radio frequency environment involved in the operation of B-Group stations in both Miami and Broward County. It is odd that Broward would offer such a statement, as it offers no probative evidence that the proposed Miami G-Group station is predicted to cause harmful interference to the existing Broward G-Group station, which is the only possibly relevant issue. Moreover, while there are some similarities between those B-Group stations and the existing and proposed G-Group stations, there are also some material differences between them other than frequency, including differences in antenna pattern, E.I.R.P and beam tilt. All that Mr. Furlong seems to achieve is calling into question Broward's motive for Broward's unwillingness to cooperate with its neighbor, as Mr. Furlong concludes that the Broward B-Group coexists with the Miami B-Group even though they are separated by only 22 miles with only occasional and

¹² Broward's engineering statement claims that Dade must protect Broward's PSA because the Dade Minor Amendment's request for a digital modulation renders the amendment major. That is simply a false statement. Amendments to add digital emissions are not within the class of major actions listed in Rule 74.911(a)(2) and, accordingly, such amendments do not render the amended application newly-filed. *Request For Declaratory Ruling on the Use of Digital Modulation by Multipoint Distribution Service and Instructional Television Fixed Service Stations*, 11 F.C.C. Rcd. 18839, 18871 (¶ 56) (1996) ("*Digital Decision*"). Moreover, Dade had already requested digital authority in a 1997 amendment submitted pursuant to the *Digital Decision*. At the time Dade filed its application, an ITFS station could only obtain a protected service area ("PSA") if it leased its excess capacity and applied to the Commission for authorization of a PSA. At this time, Broward did not lease excess capacity and neither sought nor had a PSA. This regulatory scheme was changed in 1998, when the Commission decided that all ITFS stations would have PSAs regardless of whether required to protect wireless cable service reception and without the need to file an application for the PSA. *Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, Report and Order (MM Docket No. 97-217, File No. RM-9060), at ¶ 114 (rel. Sep. 25, 1998) ("In recognition of concerns such as those expressed by the Foundation, we have decided to grant all ITFS licensees PSA protection.").

minor interference (which suggests atmospheric conditions which are not considered “harmful interference” and which would be expected to be caused by another, more distant station). Indeed, as stated above, Broward represented to the Commission in 1994 that Dade, Broward and Palm Beach Counties had agreed to “coordinated utilization of all ITFS channel groups in all three counties with minimal or no interference....”¹³

D. The Interference Consent Provided by Broward to Dade Was Properly Filed.

The PBCSB/WBS Opposition argues that the consent letter was not filed with the application and hence is ineffective.

This new argument is false. The interference consent was obtained before the Dade application was filed, bears an earlier date and was filed with the Commission on the same day the Dade application was filed. The body of Commission precedent on late consents simply does not apply to this consent letter, nor would it make any sense to ignore the consent letter under that precedent.¹⁴

¹³ A copy of this letter is in **Exhibit A**.

¹⁴ This case precedent addresses and refuses to consider ““consent letters that did not exist at the time the original application was filed....” *Wireless Cable of Florida*, 19 F.C.C. Rcd. 6390, 6392 (2004). Clearly, the Broward consent existed before the September 15, 1995 filing date of the Dade application and was filed on the same day as the Dade application was filed.

II. CONCLUSION

WHEREFORE, THE PREMISES CONSIDERED, THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA requests that the Commission return the above-captioned application to pending status and process the application.

Respectfully submitted,

THE SCHOOL BOARD OF MIAMI-DADE
COUNTY, FLORIDA

By: 

Thomas J. Dougherty, Jr.
GARDNER, CARTON & DOUGLAS
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005
202-230-5164

Dated: October 21, 2004

EXHIBIT A

The Nation's Largest Fully



Accredited School System

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Joseph Ceros-Livingston, Ed.D.
Director, Instructional Television
6600 Southwest Nova Drive
Fort Lauderdale, Florida 33317
(305) 370-8350

AUG 15 1994

Chairperson Robert D. Parks
Vice Chairperson Miriam M. Oliphant

Karen Dickerhoof
Eileen S. Schwartz
Toni J. Siskin
Diana Wasserman
Lois Wexler

Dr. Frank R. Petruzielo
Superintendent of Schools

August 12, 1994

The Secretary
Federal Communications Commission
Washington, D.C. 20554

Reference: ITFS Stations KTZ-22 and KLC-80
File Nos: BMLIF- 920410DA & BRIF-860327DA

Gentlemen:

Enclosed herewith are one (1) original and two (2) copies of FCC Form 330, with exhibits, for each of the above referenced ITFS stations. We are also including one additional copy of each of the engineering sections V and VI. These documents represent our applications for changes to the above referenced ITFS stations.

The primary purpose of these applications is to more effectively utilize the eight channels for which we have held licenses for over 25 years. The requested change in classification of KLC-80 from unattended repeater to originating station, and co-locating it with KTZ-22 at the same 50 watts of power, will provide eight (8) channels of ITFS programming, countywide. Exhibits G1 and B1 of the applications explain in detail the need for these additional channels and serve as our justification for a waiver of Section 74.902(c) of the FCC rules.

We have coordinated our applications with the current and future plans of our neighboring school districts in Dade County to our south, and Palm Beach County to our north. All three counties utilize the services of Kessler & Gehman, Telecommunications Consulting Engineers, in Gainesville, Florida. In order to provide for the coordinated utilization of all ITFS channel groups in all three counties with minimal or no interference, we have agreed to use vertical polarization of our ITFS channels in Broward County, while horizontal polarization will be used in Dade and Palm Beach counties.

Therefore, we are requesting permission to change the transmitting antenna of KTZ-22 from horizontal to vertical polarization. KLC-80 is currently licensed for vertical polarization and will use the same transmitting antenna as KTZ-22 if these applications are approved.

Your acceptance and consideration of these applications is appreciated. Please contact this office if you require further information or clarification. My phone number is (305) 370-8351; FAX (305) 370-1648.

Sincerely,

Dale F. Carls
Operations Manager

DFC/dc

Enclosures
c: Joseph Ceros-Livingston

EXHIBIT B

The Nation's Largest Fully



Accredited School System

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Joseph Ceros-Livingston, Ed.D.
Director, Instructional Television
6800 Southwest Nova Drive
Fort Lauderdale, Florida 33317
(305) 370-8350

Chairperson Miriam M. Oliphant
Vice Chairperson Lois Wexler

Karen Dickerhoof
Dr. Abraham S. Fischler
Robert D. Parks
Dr. Don Samuels
Diana Wasserman

Dr. Frank R. Petruzielo
Superintendent of Schools

May 18, 1995

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MAY 22 1995
FCC MAIL ROOM

The Secretary
Federal Communications Commission
Washington, D.C. 20554

Reference: ITFS Station KTZ-22
File No: BMLIF- 920410DA

Gentlemen:

This letter and the accompanying engineering statement (five copies) from Keith G. Blanton of the firm of Kessler and Gehman Associates, Inc., will serve as official notice to you that, effective this date, the School Board of Broward County, Florida, has begun operation of an ITFS Signal Booster Station in accordance with Section 74.985(g) of the FCC rules.

The purpose of the booster station is to relay the signals of the School Board's above referenced licensed ITFS station to one previously licensed elementary school to which the primary signal is blocked by natural terrain. Details of the installation are included in the enclosed engineering statement.

Please contact this office if you require further information or clarification. My office phone number is (305) 370-8351; FAX (305) 370-1648.

Sincerely,

Dale F. Carls
Operations Manager

DFC/dc

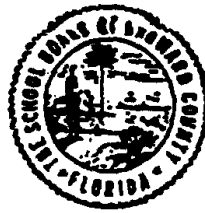
Enclosures

c: Joseph Ceros-Livingston
Keith G. Blanton

EXHIBIT C

217 893 8806

The Nation's Largest Fully



Accredited School System

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Joseph Ceros-Livingston, Ed.D.
Director, Instructional Television
6600 Southwest Nova Drive
Fort Lauderdale, Florida 33317
(305) 370-8350

Chairperson Miriam M. Oliphant
Vice Chairperson Lois Wexler

Karen Dickertool
Dr. Abraham S. Flechler
Robert D. Parks
Dr. Don Samuels
Diana Wasserman

Dr. Frank R. Petruzielo
Superintendent of Schools

April 27, 1995

Mr. Don MacCullough, Executive Director
Division of Media Programs
Dade County School Board
172 N.E. 15th Street
Miami, FL 33132

Dear Don:

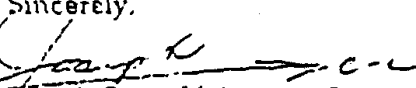
As we have discussed many times in the past, the School Board of Broward County, Florida, currently has an application pending before the FCC to relocate our ITFS station, KLC-80, to our Davie studio site. As you know, KLC-80 operates on the B group of ITFS channels, vertically polarized. We are proposing to relocate it from Coconut Creek, to Davie and increase the transmitter power from 10 to 50 watts. It will utilize the same vertically polarized transmitting antenna as our existing base station, KTZ-22, which is currently operating at 50 watts on the G group, in Davie.

We have both discussed this with our consulting engineers, Kessler & Gehman Associates, in the past, and have both agreed to a tentative "master plan" wherein you would continue to operate all your existing and future ITFS channels horizontally polarized, with possible frequency offsets if required, and we have agreed to change KTZ-22 from horizontal to vertical polarity and operate all our existing and future ITFS channels vertically polarized. This should minimize any possible interference between the two systems, and permit maximum utilization of the ITFS spectrum in the Southeast Florida area.

The FCC has requested that we submit to them, as a supplement to our current application to relocate KLC-80, a letter from you, indicating that you have no objection to our proposal. We have indicated in our application to the FCC that we will cooperate with you in solving any interference problems which might result from our relocation of KLC-80, including the upgrading of your receiving antenna at any affected site.

I would appreciate receiving a letter from you, as described above, at your earliest convenience, so that I may forward it to the FCC.

Sincerely,


Joseph Ceros-Livingston, Ed.D.
Director

JC-L/dc
cc: Dale F. Carls, Operations Manager, ITV

EXHIBIT D

COPY

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FEB 21 1997

Before the
Federal Communications Commission
Washington, D.C. 20554

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In re Application of

**THE SCHOOL BOARD OF
DADE COUNTY, FLORIDA**

For Modification of
Authorization of ITFS
Station KTB-85,
Miami, Florida

)
)
) File No. BMPLIF-950915HW
)
)
)
)

To: The Chief
Video Services Division
Mass Media Bureau

**CONSOLIDATED OPPOSITION TO
PETITIONS TO DISMISS OR DENY**

**THE SCHOOL BOARD OF
DADE COUNTY, FLORIDA**

E. Ashton Johnston
Paul, Hastings, Janofsky & Walker LLP
1299 Pennsylvania Avenue, N.W.
10th Floor
Washington, D.C. 20004-2400
(202) 508-9500

February 21, 1997

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SUMMARY

The School Board of Dade County, Florida (the "School Board"), by its attorney and pursuant to Section 74.912 of the Commission's Rules, hereby submits its Consolidated Opposition to (1) the Petition to Dismiss or Deny filed by Wireless Broadcasting Systems of America, Inc. ("WBSA") and (2) the Petition to Dismiss or Deny filed by the School District of Palm Beach County, Florida ("Palm Beach") with respect to the School Board's application (the "Modification Application") for authority to modify the facilities of the School Board's Instructional Television Fixed Service ("ITFS") Station KTB-85 in Miami, Florida.

Herein, the School Board shows that the WBSA Petition and the Palm Beach Petition demonstrate no legal or factual basis for dismissal of the School Board's Modification Application; consequently, the Petitions must be denied.

The principal argument raised against the Modification Application is that it was untimely filed with respect to an earlier-filed modification application of Palm Beach. However, this argument hinges upon a request for rule waiver filed by Palm Beach, which has not been acted upon, and, as shown herein, should not be granted. The School Board's Modification Application was timely filed in accordance with the Commission's Rules.

WBSA also asserts that the Modification Application fails to provide required interference protection to proposed co-channel ITFS stations. The School Board rejects these claims, which are based upon erroneous engineering analysis, and upon other conclusions that WBSA draws with respect to ITFS stations for which WBSA lacks standing to address concerns of potential interference.

Finally, WBSA and Palm Beach make untimely attacks on the reinstatement of, and processing of the renewal application for, the KTB-85 license. As the School Board shows, processing and grant of the Modification Application will serve the public interest.

RECEIVED

FEB 21 1997

Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Application of

**THE SCHOOL BOARD OF
DADE COUNTY, FLORIDA**

For Modification of
Authorization of ITFS
Station KTB-85,
Miami, Florida

)
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To: The Chief
Video Services Division
Mass Media Bureau

**CONSOLIDATED OPPOSITION TO
PETITIONS TO DISMISS OR DENY**

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The following is respectfully shown:

^{1/} The School Board has requested unopposed extensions of time until February 21, 1997 to file this Consolidated Opposition.

I. Background

1. The School Board holds licenses from the Commission that authorize the School Board to operate ITFS Stations WHA-956 on the A channel group, WHG-230 on the C channel group, and KTB-84 and KTB-85 on the F channel group in Miami, Florida. The School Board is part of a consortium of instructional, educational, and non-profit institutions and entities in South Florida that are engaged in a cooperative effort to expand the use of telecommunications for the distribution of educational and instructional programming. These entities, which include the licensees of other ITFS stations authorized to operate in Miami, Florida, are working in conjunction with an affiliate of National Wireless Holdings, Inc. to develop a fully-integrated ITFS/wireless cable system that will facilitate the efficient use of ITFS and Multichannel Distribution Service ("MDS") channels for the delivery of both educational programming and wireless cable services. It is contemplated that these ITFS stations would be co-located, enjoying protected service areas and transmitting digitally, in a manner that will maximize the benefits of such a cooperative undertaking and that will truly represent a model of cooperation and efficiency among and between the providers of educational and instructional telecommunications service and the providers of wireless cable service in competition with the incumbent wired cable systems in Dade County.

2. In furtherance of its goals, on September 15, 1995 the School Board filed the Modification Application seeking authority to, inter alia, change the

authorized location of the KTB-85 transmitting facilities, increase the transmitter output power to 50 watts, and utilize either analog or digital transmission.^{2/}

II. The KTB-85 Modification Application Was Timely Filed

A. Palm Beach's Modification Application Was Not Cut-Off Prior to September 15, 1995

3. On May 24, 1995, Palm Beach filed an application for authority to modify its license for ITFS station KZB-29, File Number BMPLIF-950524DM (the "Palm Beach Modification Application"), proposing, inter alia, to relocate the KZB-29 facilities from Riviera Beach, Florida to Boynton Beach, Florida. Palm Beach filed amendments to its Modification Application on August 21, 1995 and September 14, 1995. Also on May 24, 1995, in conjunction with a settlement involving an application to modify Palm Beach's D group channel facilities, Palm Beach submitted to the Commission a request for waiver of the Commission's Rules, which provide that an application seeking a grant of authority to make major changes to an ITFS facility is subject to the filing of competing applications. 47 C.F.R. § 74.911.

4. By Public Notice, Report No. 23564A, released August 3, 1995, the Commission announced that it would accept major change applications from ITFS licensees between August 3, 1995 and September 15, 1995. The Public Notice further stated that "[a]ll ITFS applications for major changes filed during this limited period and all previously tendered and not cut-off ITFS applications will be cut-off

^{2/} The School Board also filed applications for authority to modify the facilities of ITFS Stations WHA-956, WHG-230, and KTB-84.